

Comments on Labor Agency Reorganization in the California Performance Review
CA Labor Federation, AFL-CIO
September 27, 2004 – submitted by Art Pulaski

Thank you for this opportunity to present our initial response to the Government Reorganization recommendations within the California Performance Review. Although there is a wide range of reorganization issues raised within the CPR, I would like to focus my comments today on the proposed changes to the Labor and Workforce Development Agency.

We raise five points of concern with the CPR report as it relates to the Labor and Workforce Development Agency:

- I. **The mission of the Labor and Workforce Development Agency is fundamentally shifted to favor business development over worker protection.** The current Labor Agency's welcome statement¹ recognizes the importance of a level playing field that includes the vigorous enforcement of our state labor laws. The CPR reorganization shifts the mission of the new Department of Labor and Economic Development² so that its primary purpose is it is evaluated first and foremost "To bring jobs and economic growth back to California and to restore the business climate, the state must be attractive to companies. To do this, the government should provide a framework to enable businesses to grow and prepare workers with the skills necessary to compete in the 21st century."

The interests of workers and workers' protections are subservient to the interests of business. This makes the development of "high-quality" and "high-paying" jobs for California families that "allow (workers) and their families to prosper", and the "protection" of California workers the secondary goals of the proposed Department of Labor and Economic Development.

- II. **The proposals represent a remarkable consolidation of power into a single political appointee.** Proposed structural changes – such as the elimination of all the Agency's appeals boards – would seriously undermine important due process rights for California workers. Most alarming is the delegation of power to decide all employee cases involving right and benefits under state law to the Secretary, a gubernatorial appointee.

Under this proposal, the Workers' Compensation, Unemployment Insurance, Cal/OSHA Appeals Boards and the Department of Fair Employment and Housing would be eliminated and their duties incorporated into a newly created "Office of Appeals." Panels of Administrative Law Judges (ALJs) would review appeals cases and make recommendations to the Secretary. Ultimately, one political appointee would be the final adjudicator for hundreds of thousands of appeals from workers who have been injured, laid off, work in unsafe workplaces, or discriminated against.

¹ "The Labor and Workforce Development Agency, which was created in 2002, is committed to ensuring that California businesses and employees have a level playing field upon which to compete...Equally vital for a level playing field is fair, impartial and consistent enforcement of the laws. This Agency is firmly committed to ensuring that law-abiding employers and their workers are not victimized by others, who would violate the states' labor, health, safety and tax laws in order to gain competitive advantage." – from Secretary Bradshaw welcome message.

² The Department of Labor and Economic Development should be evaluated in the context of the following business and employment goals: Attracting new businesses to California; Improving the business climate to retain businesses in California; Developing a workforce that meets the needs of employers; and Increasing the skill set of workers so they can obtain high-quality, high-paying jobs that allow them and their families to prosper.

The intent of these boards is to provide workers and employers with the opportunity to appeal decisions to an independent body. The availability of this appeals process is especially important for workers, who often cannot afford to appeal a decision in court. Not only does this proposal deny these workers their rights to due process, it is completely unachievable. If this were the decision making process, the Department Secretary would only have time to issue these appeals decisions and have no time to perform any other functions.

- III. **Important labor law divisions are proposed to be eliminated, with a lack of clarity about how their functions would be carried out.** The statutory language accompanying the CPR report simply vests all powers, duties, purposes, responsibilities and jurisdictions of the Department of Labor Standards and Enforcement (DLSE), the Department of Industrial Relations (DIR), Cal/OSHA, and the Agricultural Labor Relations Board (ALRB) to the Secretary of the Department starting in July 1, 2005. It is unclear how all these functions would be performed under the new Workplace Protection Division.

The Administrative Director of the Division of Workers' Compensation is also eliminated, with the functions transferred to the Secretary. Again, it is unclear how these functions will be performed, given that there is no mention of the Workers' Compensation program in the new organizational chart.

Attempts to centralize data collection must take training and expertise into consideration. The CPR proposes to create a Labor Market Research Office by merging the EDD's Labor Market Information Division with the DLSR. The DLSR currently issues the prevailing wage determinations and collects and houses more than 6,000 collective bargaining agreements in order to determine these prevailing rates. Wage Analysts in the DLSR are trained in data collection and the methods for surveying labor market for establishment of prevailing wages.

- IV. **Successful joint labor-management commissions are proposed to be eliminated.** The new Department would also eliminate several entities that have proven valuable for workers and employers on workforce-related issues. There are few opportunities for labor and management to come together to make joint decisions that protect worker safety, and invest in worker training. The CPR would eliminate those few boards that involve both labor and management.

The CPR would eliminate the Employment Training Panel (ETP), a unique body that is the state's only training program for incumbent workers. Since its inception, ETP has funded training for more than 500,000 workers and 50,000 businesses in California. ETP promotes high-quality job training by encouraging business and labor representatives to plan training programs together and by targeting training dollars at training programs that lead to good-quality jobs. Without the labor-management ETP board, training grants would be made by only political appointees.

The CPR proposes to eliminate the California Apprenticeship Council (CAC), which has been in place since the 1930s, because it concludes that the CAC "is no longer needed to perform regulatory and advisory responsibilities (and that) activities should be performed by the Division of Workforce Development within the new Department of Labor and Economic Development."

The CPR further proposes to eliminate the Cal/OSHA Standards Board. The Cal/OSHA Standards Board has played an important role in developing workplace health and safety standards in California. Again, it is unclear how the CPR proposes to replace the functions currently played by this joint labor-management board.

Finally, the CPR would abolish the Commission on Health and Safety and Workers' Compensation (CHSWC). This important organization provides research assistance and policy recommendations related to the state's workers' compensation system. The Commission – whose board includes labor and employer representatives – provided invaluable research assistance in the workers' compensation reforms that were passed during the past two legislative sessions. The state savings resulting from the Commission's recommendations far outweigh the expenditures needed to support this small but dynamic program. The CPR's proposal to eliminate the Commission would strip the state of its most valuable source of thoughtful policy recommendations in the workers' compensation arena. CHSWC is the only venue in this arena that allows labor and management to dialogue, without the intrusion of vendors who make money of this system.

- V. **Unbridled contracting out is promoted, without regard to job or worker protections.** The CPR report lays out a variety of contracting out methods, including franchising, vouchering, volunteerism, and deregulation. All of these ideas ignore current state laws that set out clear parameters for when public services can be contracted out. The report does not discuss whether or not private contractors can take the work offshore, leaving California with fewer jobs. Proposed contracting out methods do not discuss protection of worker wages and benefits in the contracting process.

Thank you for the opportunity to provide testimony today regarding the proposed government reorganization within the California Performance Review.